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COMPLAINT

Sept-12- 2003

Ms. Karen Higginbotham
Director, Office of Civil Rights
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

By Certified Mail

Re: Title VI Civil Rights Complaint against the Texas Commission on Environmental Quality

Dear Director Higginbotham,

The Community In-power Development Association (CIDA) (herein the "Complainants") is hereby filing this administrative complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d (hereafter "Title VI") against the State of Texas acting through the Texas Commission on Environmental Quality ("TCEQ"), herein the "Defendant." This complaint alleges continuing environmental injustice and interrelated inequities.

The U. S. Environmental Protection Agency ("EPA") and EPA's Office of Civil Rights have jurisdiction over this matter because the Texas Commission on Environmental Quality oversees the request, application, receipt, deployment and administration of federal funds from the EPA for public health and environmental protection purposes.

Complainants allege that the TCEQ discriminates against members of the CIDA and residents of the Westside of Port Arthur, Texas, by ignoring their environmental protection and public health needs in violation of the Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d and its implementing regulations which are codified at 40 C.F.R. Part 7 ("Title VI").

The CIDA alleges that the TCEQ has engaged in concerted and systematic discriminatory conduct through the circumvention of laws, indifference to environmental regulations and responsibilities, and discriminatory permitting and enforcement practices. These actions deny minorities, including people of color and low-income citizens, equal protection of the law.

Because the TCEQ and the State of Texas receive federal funds from the EPA, they are obligated to comply with Title VI of the Civil Rights Act of 1964, which prohibits discrimination in

programs using federal funds. Moreover, Presidential Executive Order No. 12898 on Environmental Justice affirms and prescribes fundamental requirements for federal agencies to insure that all federal programs and federally funded agencies shall not be allowed to increase the disproportionate burdens of environmental hazards in communities of color and low-income neighborhoods. Such are the neighborhoods impacted by several industrial operations, including Premcor, Motiva, Huntsman, and Chevron-Phillips, which surround the people of the Westside of Port Arthur, Texas.

This complaint necessarily covers events over a period of years in order to demonstrate a clear pattern of discriminatory conduct and disproportionate adverse environmental impacts. For the purposes of clarity, the Defendant state agency is referred to in this complaint by its current name as the Texas Commission on Environmental Quality (TCEQ), even when it may have been called by its previous name, the Texas Natural resources Conservation Commission (TNRCC).

Included with this complaint are various Exhibits, the first of which is a copy of Presidential Executive Order No. 12898. Numerous documents that are referenced by endnotes will be provided upon request. Please consider this letter as part of this formal complaint.

Sincerely,

Hilton Kelley
Founder, CIDA

Cc: Marianne Lamont Horinko, Administrator, U.S. EPA
Mr. Richard E. Greene Regional Administrator, Region VI, EPA
Robert J. Huston, Chairman, Texas Commission on Environmental Quality
Margaret Hoffman, Executive Director, Texas Commission on Environmental Quality
Honorable Rick Perry, Governor, State of Texas
Greg Abbott, Attorney General of Texas

OFFICE OF CIVIL RIGHTS
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Community In-power and Development Association ("CIDA"),	§ § <u>COMPLAINT</u>
Complainant,	§ of Discriminatory Practices
v.	§ of the Texas Commission on § Environmental Quality in violation § of Title VI of the Civil Rights Act § of 1964, 42 U.S.C. Sec. 2000d
Texas Commission on Environmental Quality,	§ §
Defendant	§ §

I. Description of Parties:

A. Complainants:

The Community In-power and Development Association is the Complainant. It is an African American community organization. Members of the CIDA enjoy a unique *and historical* relationship to the communities in the area of Premcor and other industrial facilities. Members of the CIDA live immediately to the East, and in some cases adjacent to Premcor and other facilities.

The CIDA seeks among other things, to safeguard the health and welfare of its members and the community where its members live and work.

B. Defendant:

The Texas Commission on Environmental Quality ("TCEQ"), formerly the Texas Natural Resources Conservation Commission (TNRCC), is the Defendant. The TCEQ has been delegated the authority to administer an air pollution permitting program pursuant to 33 U.S.C. §1342(b). The Texas Commission on Environmental Quality has been delegated to issue permit for the construction and operation of facilities in accordance with Title V of the

federal Clean Air Act (42 U.S.C. 7401, et seq.). The Texas Commission on Environmental Quality receives federal funds.

The TCEQ has statutory and delegated authority to regulate operations of Premcor company's refinery, Facility EPA ID No. TXD008090409, located in Jefferson County, Texas.

II. Description of the Polluting Facility

The Premcor crude oil refinery is located in Jefferson County, adjacent to the predominately African American neighborhood of Port Arthur, Texas. Jefferson County is designated as a non-attainment area for failing to meet the National Ambient Air Quality Standard for ozone.

III. Summary of Disparate Industrial Pollution Impacts on the CIDA and The Defendants Discriminatory Actions

A. Summary of Air Pollution Impacts

For years families living near the Premcor facility have complained of chemical odors and particle fallout that settles on and in their homes. These families are predominately African American, low income, and many are members of CIDA. These fence-line neighbors of Premcor have also complained of health problems caused or made worse by the facility's emissions. These health problems include cancer, skin problems, and respiratory problems including asthma.

Premcor's operations create air pollution emissions that impact the members of CIDA and the properties where they live and work. In the year 2000, the most recent year for which Toxic Release Inventory (TRI) data is available, Premcor reported releasing more than 152,000 pounds of TRI reportable chemicals to the air.¹ Additionally, Premcor releases massive amounts of Criteria Pollutants, including sulfur dioxide (SO₂), volatile organic compounds (VOCs), nitrogen oxides (NO_x), carbon monoxide (CO), and particulate matter. Air pollutants released by Premcor include known and suspected carcinogens, cardiovascular or blood toxicants, developmental toxicants, neurotoxicants, reproductive toxicants, and respiratory toxicants. In addition to the release of annually reported TRI and Criteria pollutants to the air, Premcor released massive amounts of pollutants due to so-called "upsets" and other operational problems.

In early 2002, when the TCEQ chose to expedite Premcor's permit application and deny citizen participation opportunities, the agency was well aware that Premcor's air pollution emissions were adversely impacting the African American community in Port

Arthur. In fact, the TCEQ had already identified some of Premcor's pollution events as violations.

For the period 12-27-00 through 1-12-01 Premcor reported a continuous release of 417 lbs./hr. of particulate matter, 65,000 lbs./hr. of carbon monoxide, and 60% opacity. This exceeded Premcor's allowable emission rates and was cited as a violation.²

On 1-29-01, Premcor released 322,598 lbs. of sulfur dioxide and 3,426 lbs. of hydrogen sulfide from a unit (EPN E-03-Scott) over approximately 8 hours. This exceeded the allowable emissions limit specified in the permit and was cited as a violation. Premcor was also cited for failing to properly report this release.³

On 4-3-01 and 4-4-01, Premcor's operational problems resulted in five complaint calls to the TNRCC. A subsequent investigation by the agency documented "overpowering odors" from Premcor and further stated, "seven person reported to hospitals with complaints of burning throat and eyes, nausea, and respiratory distress - all resultant from releases during the upset." Premcor was cited for failing to failing to prevent the discharge of emissions "that tended to be injurious and adversely affected human health and interfered with the normal use and enjoyment of property." ⁴

On 5-7-01 operational problems resulted in unplanned unit shutdowns and the release of 284,631 lbs. of sulfur dioxide, 17,282 lbs. of volatile organic compounds, and 3,069 lbs. of hydrogen sulfide over a period of approximately 16 hours.⁵

On 8-15-01 Premcor notified TNRCC that an operational problem with 9 CO Boiler necessitated a unit shutdown that was expected to last 276 hrs and cause the release of 7,644,096 lbs. of sulfur dioxide and 57,395 lbs. of particulate matter. ⁶

On 1-1-02 an operational problem lasting 7.83 hours involving units DCU-843 and HCU-943 resulted in a release of 3,098 lbs. of sulfur dioxide, 2,001 lbs. of volatile organic compounds, and 243 lbs. of hydrogen sulfide. ⁷

On 1-3-02 an operational problem lasting 2.47 hours involving process unit DCU-843 resulted in a release of 40,905 lbs. of SO₂, 3,644 lbs. of VOCs, and 443 lbs. of H₂S. Opacity was 75%.⁸

Between January and July of 2002 alone, Premcor reported releases due to operational problems of more than 737,800 pounds of sulfur dioxide, 10,800 pounds of hydrogen sulfide, 228,390 pounds of hazardous substances/volatile organic compounds, and 3000 pounds of benzene.⁹

Premcor's pollution, combined with pollution from other industrial facilities in the area, inundates the community where CIDA members work and live. In the first seven months of 2002 alone, operational problems at area refineries and chemical plants resulted in the release of almost 725 tons (1,449,069 pounds) of sulfur dioxide, nearly ten tons (19,927 pounds) of hydrogen sulfide, 844 tons (1,688,077 pounds) of smog forming volatile organic compounds, nearly 42 tons (83,426 pounds) of the carcinogen benzene, and over 57 tons (115,483 pounds) of carbon monoxide.¹⁰ Added to this witches brew of pollution are many tons of particulate matter and other unlisted chemicals.

It is because of the this pollution that the CIDA has held numerous community meetings, held protest demonstrations, appealed to public officials for help, and even conducted its own environmental testing to confirm pollution impacts.

B. Summary of Defendants Discriminatory Actions

The TCEQ has been well aware of the massive amounts of air pollution released by Premcor and other area industries. The TCEQ has also been aware of the adverse impacts and citizen complaints caused by this pollution. Even though members of CIDA and others have repeatedly complained to the TCEQ about Premcor's air pollution, they have not had their complaints properly investigated or their air comprehensively monitored or sampled by the TCEQ. It is because of TCEQ's inadequate enforcement that Premcor's violations and preventable pollution have continued.

In 2002, when members of CIDA sought to protect themselves and their community by participating in the TCEQ permitting process, they were denied their right to do so. Premcor's expansion project sought to add more pollutants to the community's already polluted air. Instead of ensuring the community's input and participation in the permitting process, the TCEQ conspired with Premcor to deny such input and participation. In so doing, the TCEQ denied citizens the opportunity to strengthen the permit and make it more protective.

IV. Disproportionate Impacts of Pollution on People of Color and Low Income Citizens

A. Scholarly Studies

CIDA recognizes that the Office of Civil Rights is well aware of studies and anecdotal evidence establishing that the hazards posed by pollution, including toxic and hazardous wastes in the United States is disproportionately borne by people of color and low income communities.

B. Legal Authorities

The complainants bring this administrative action pursuant to Title VI of the Civil Rights Act of 1964. The complainants note that the subject of the complaint also implicates the Constitution of the United States. CIDA further acknowledges that the Office of Civil Rights' expertise in this area of law and will only briefly, and for the purposes of clarity, review the mandate of Title VI, 42 U.S.C. Sec. 2000d in relevant paragraphs:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. §2000d, Title VI, Section 601.

The Act also provides in Section 602:

Each federal department and agency which is empowered to extend federal financial assistance to any program or activity...is authorized and directed to effectuate provisions of Section 2000d of this Title with respect to such program or activity by issuing rules, regulations and orders...which shall be consistent with the achievement of the objectives of the Statute authorizing the financial assistance in connection with which the action is taken. 42 U.S.C § 200d-1, Title VI, Section 602.

The EPA's applicable regulations prohibit not only intentional discrimination, but also uses of federal funds that have discriminatory effects. The EPA regulations implementing Title VI state:

A recipient shall not use criteria or methods of administering its program which has the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of *defeating or substantially impairing accomplishment of the objectives of the program* with respect to individuals of a particular race, color, national origin, or sex. 40 C.F.R. §7.35 (b) (emphasis added)

Thus, under Title VI and EPA's implementing regulations, programs receiving EPA funds may not be administered in a manner that has the practical effect of subjecting individuals to discrimination based upon race. As set forth below, however, the actions of the Texas Commission on Environmental Quality do just that

V. Evidence of Defendant's Violations of Title VI of the Civil Rights Act of 1964.

- A. The TCEQ refused to communicate with CIDA and respond to petitioners' requests for information, updates, public meetings, and a contested permit hearing on Premcor's proposal for an expansion involving the construction of three new units with associated pollution increases. Furthermore, the TCEQ conspired with the Premcor refinery to expedite the permitting process and circumvent citizen participation provisions so as to deny the public's right to make comments, have meetings, and a hearing on Premcor's expansion project.

1. January 11, 2002: The required notice of Premcor's intent to obtain an air permit was published in the Port Arthur News. The "Notice" set forth the affected community's rights to make comments, request a public meeting, and to request a contested case hearing. (Exhibit 2)

2. February 12, 2002: TNRCC (TCEQ) memo to Premcor states "getting ready to send out draft permit for comments." (Exhibit 3).

3. February 13, 2002: Premcor's memo to TNRCC (TCEQ) states, "Thank you for the speed in which this permit has developed....I don't mean to rush." (Exhibit 4).

4. February 20, 2002: TNRCC (TCEQ) memo to Premcor states, "got notification from Chief Clerk we have received a hearing request in response to the PN (public notice). Unfortunately, this throws us into the hearing procedures loop... do we grant the request or not?"

In this memo, the agency states that a hearing, which is one of the most important of all the citizenship participation opportunities, is considered to be "unfortunate." The agency then abdicates its responsibility as a regulatory authority, and asks Premcor to decide whether or not citizens are to be granted a hearing. (Exhibit 5).

5. February 21, 2002: Premcor memo to TNRCC (TCEQ): "Do you have time to talk to Mr. Kelley?" Mr. Kelly is a representative of CIDA who made the hearing request to the agency. (Exhibit 6).

6. April 8, 2002: The "Premcor/TNRCC (TCEQ) Meeting Agenda" states:

"Permitting Strategy for Tier II Low Sulfur Gasoline

1. History of Tier II Permitting:

- Early Success • Citizen involvement and the Premcor Response • Current Situation

2. New Permit Strategy:

- Retain existing application • Focus of strategy = streamlined authorization mechanism (flex amendment) for "mission critical" Tier II gasoline project
 - No public notice
 - No public hearing
 - Meet existing construction schedule (mid May start)." (Exhibit 7).

7. April 11, 2002: Premcor hand delivers Permit amendment to TNRCC (TCEQ). Morris Carter of Premcor writes, "the schedule for this project is extremely critical and Premcor must be in a position to commence construction by May 10, 2002." (Exhibit 8).

8. May 13, 2002: Internal TNRCC (TCEQ) memo to staff states, "Subject: Rush project coming. Rush project for Premcor refinery that's coming your way... working on the RFC and should have it to you within the hour." (Exhibit 9).

9. May 14, 2002: TNRCC (TCEQ) interoffice memo states, "RUSH project – need ASAP: Please have one of the modelers perform an audit on this project." (Exhibit 10).

10. May 17, 2002: TNRCC (TCEQ) issues Premcor permit amendment for refinery expansion without a public notice, without public comment, and without a public meeting or hearing. The TCEQ and Premcor acted in concert to deny citizens their rights, even as CIDA members gathered more than 500 petition signatures requesting a hearing and held news conferences and a demonstration in front of the refinery.

VI. Summary

Because Premcor was allowed by the TCEQ to proceed with its expansion project in the absence of public scrutiny and input, it was able to avoid the prospect of additional pollution controls and operational changes that might have reduced air pollution emissions and associated community impacts.

The TCEQ's actions not only served to reward Premcor for its violations and preventable pollution, but also to discourage other polluting facilities from complying with the law and investing in pollution prevention measures. The history of air pollution problems and disproportionate adverse impacts on Port Arthur's African American community mirrors the TCEQ's continuing discriminatory enforcement and permitting practices.

EXHIBITS

Exhibit 1. Executive Order No. 12898.

Exhibit 2. January 11, 2002: Notice of Permit Application

Exhibit 3. February 12, 2002: TNRCC (TCEQ) memo to Premcor

- Exhibit 4. February 13, 2002: Premcor's memo to TNRCC (TCEQ)
- Exhibit 5. February 20, 2002: TNRCC (TCEQ) memo to Premcor
- Exhibit 6. February 21, 2002: Premcor memo to TNRCC (TCEQ)
- Exhibit 7. April 8, 2002: Premcor/TNRCC (TCEQ) Meeting Agenda
- Exhibit 8. April 11, 2002: Premcor notation to TNRCC (TCEQ).
- Exhibit 9. May 13, 2002: Internal TNRCC (TCEQ) memo
- Exhibit 10. May 14, 2002: TNRCC (TCEQ) interoffice memo

Information Sources

- ¹ Environmental Defense Fund, Environmental Release Report reflecting Premcor's reporting to the U.S. Environmental Protection Agency. (See: <http://www.scorecard.org>)
- ² TNRCC Interoffice Memorandum of 6-19-01 and attached Summary of Violations.
- ³ TNRCC Interoffice Memorandum of 6-19-01 and attached Summary of Violations.
- ⁴ TNRCC Interoffice Memorandum of 6-19-01 and attached Summary of Violations.
- ⁵ Premcor letter to TNRCC of 5-21-01.
- ⁶ Premcor Shutdown/Startup Notification to TNRCC dated 8-15-02.
- ⁷ Premcor Final Upset Notification Form of 1-11-02 filed with the TNRCC.
- ⁸ Premcor Final Upset Notification Form of 1-17-02 filed with the TNRCC.
- ⁹ Figures obtained from final upset reports submitted by Premcor to TCEQ. Emissions of benzene, recognized as a volatile organic compound, are listed separately and not included in volatile organic compound total.
- ¹⁰ Figures obtained from final upset reports submitted by Premcor to TCEQ. Emissions of benzene, recognized as a volatile organic compound, are listed separately and not included in the volatile organic compound total.